

HOUSE BILL No. 1808

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-3.

Synopsis: Cigarette manufacturer fee. Imposes a \$0.025 fee on each cigarette sold by a manufacturer. Requires a nonparticipating manufacturer that does not sell cigarettes in Indiana to prepay the fee before selling cigarettes in Indiana. Provides a credit against the fee to manufacturers in varying amounts. Establishes the cigarette manufacturer fee account in the state general fund. Distributes money in the account to: (1) human immunodeficiency virus (HIV) prevention programs; (2) community health center capital expenditures; and (3) the master settlement agreement fund. Requires a cigarette distributor to report certain information to the department of state revenue.

Effective: July 1, 2005.

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January 19, 2005, read first time and referred to Committee on Public Health.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1808

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-3-3-12 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. Any tobacco
3 product manufacturer selling cigarettes to consumers within Indiana
4 (whether directly or through a distributor, retailer, or similar
5 intermediary or intermediaries) after June 30, 1999, shall do one (1) of
6 the following:

7 (1) Become a participating manufacturer (as that term is defined
8 in section II(jj) of the Master Settlement Agreement) and
9 generally perform its financial obligations under the Master
10 Settlement Agreement. ~~or~~

11 (2) **Either:**

12 (A) place into a qualified escrow fund by April 15 of the year
13 following the year in question the following amounts (as such
14 amounts are adjusted for inflation):

15 ~~(A)~~ (i) 1999, \$0.0094241 per unit sold after June 30, 1999;

16 ~~(B)~~ (ii) 2000, \$0.0104712 per unit sold;

17 ~~(C)~~ (iii) for each of 2001 and 2002, \$0.0136125 per unit



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1 sold;

2 ~~(D)~~ (iv) for each of 2003 through 2006, \$0.0167539 per unit
3 sold; **and**

4 ~~(E)~~ (v) for each of 2007 and each year thereafter,
5 \$0.0188482 per unit sold; **or**

6 **(B) pay the fee imposed under IC 24-3-6-11.**

7 SECTION 2. IC 24-3-5.4-14 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) Not later than
9 July 1 of each year, the attorney general shall make available to the
10 public by publishing on accessIndiana (as defined in IC 5-21-1-1.5) a
11 directory listing all brand families listed in certifications filed under
12 section 13 of this chapter.

13 (b) A directory described in subsection (a) shall not include the
14 name or brand families of a nonparticipating manufacturer:

15 (1) that fails to comply with section 13 of this chapter; or

16 (2) whose certification fails to comply with section 13(c) or 13(e)
17 of this chapter, unless the attorney general determines that the
18 failure has been remedied.

19 (c) The directory may not include a tobacco product manufacturer
20 or a brand family if the attorney general concludes that:

21 (1) in the case of a nonparticipating manufacturer, **either:**

22 **(A)** all escrow payments required under IC 24-3-3-12 for any
23 period for any brand family, whether or not listed by the
24 nonparticipating manufacturer, have not been fully paid into
25 a qualified escrow fund governed by a qualified escrow
26 agreement that has been approved by the attorney general; **or**

27 **(B) all fees imposed under IC 24-3-6 have not been fully**
28 **paid, as determined by the department of state revenue; or**

29 (2) all outstanding final judgments, including interest on the
30 judgments, for violations of IC 24-3-3 have not been fully
31 satisfied for the tobacco product manufacturer or brand family.

32 (d) The attorney general shall update the directory as necessary to
33 correct mistakes or to add or remove a tobacco product manufacturer
34 or brand family to keep the directory in conformity with the
35 requirements of this chapter.

36 (e) The attorney general shall post in the directory and transmit by
37 electronic mail or other means to each distributor or stamping agent
38 notice of any removal from the directory of a tobacco product
39 manufacturer or brand family not later than thirty (30) days before the
40 attorney general removes the tobacco product manufacturer or brand
41 family from the directory.

42 (f) Unless otherwise provided in an agreement between a tobacco

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product manufacturer and a distributor or stamping agent, a distributor or stamping agent is entitled to a refund from a tobacco product manufacturer for any money paid by the distributor or stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer or brand family that:

(1) are in the possession of the distributor or stamping agent on;
or

(2) the distributor or stamping agent receives from a retailer after; the date on which the tobacco product manufacturer or brand family is removed from the directory.

(g) Unless otherwise provided in an agreement between a retailer and a distributor, stamping agent, or tobacco product manufacturer, a retailer is entitled to a refund from a distributor, stamping agent, or tobacco product manufacturer for any money paid by the retailer to the distributor, stamping agent, or tobacco product manufacturer for any cigarettes of the tobacco product manufacturer or brand family that are in the possession of the retailer on the date on which the tobacco product manufacturer or brand family is removed from the directory.

(h) The attorney general shall not restore a tobacco product manufacturer or brand family to the directory until the tobacco product manufacturer pays a distributor, stamping agent, or retailer any refund due under subsection (f) or (g).

(i) A distributor or stamping agent shall provide and update as necessary an electronic mail address to the attorney general for purposes of receiving a notification required by this chapter.

SECTION 3. IC 24-3-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 6. Cigarette Manufacturer Fee

Sec. 1. As used in this chapter, "account" refers to the cigarette manufacturer fee account established by section 14 of this chapter.

Sec. 2. As used in this chapter, "brand family" has the meaning set forth in IC 24-3-5.4-1.

Sec. 3. As used in this chapter, "cigarette" has the meaning set forth in IC 24-3-3-5.

Sec. 4. As used in this chapter, "department" refers to the department of state revenue.

Sec. 5. As used in this chapter, "distributor" has the meaning set forth in IC 6-7-1-6.

Sec. 6. As used in this chapter, "fee" refers the to the cigarette manufacturer fee imposed under section 11 of this chapter.

Sec. 7. As used in this chapter, "master settlement agreement"

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has the meaning set forth in IC 24-3-3-6.

Sec. 8. As used in this chapter, "nonparticipating manufacturer" has the meaning set forth in IC 24-3-5.4-7.

Sec. 9. As used in this chapter, "participating manufacturer" has the meaning set forth in IC 24-3-3-12(1).

Sec. 10. As used in this chapter, "stamp" has the meaning set forth in IC 6-7-1-9.

Sec. 11. (a) The department shall impose a fee known as the cigarette manufacturer fee in the amount of two and one-half cents (\$0.025) on each cigarette on which the tax imposed by IC 6-7-1-12 is paid.

(b) The fee is in addition to any other fee or tax.

(c) At the same time a manufacturer files its adjusted gross income tax return under IC 6-3, the manufacturer shall pay all fees imposed during the preceding calendar year. The department shall prescribe the manner in which the fee is reported.

(d) The department shall deposit revenue generated by the fee into the account established by section 14 of this chapter.

Sec. 12. (a) A participating manufacturer is entitled to a credit against the fee imposed under section 11 of this chapter in an amount determined under subsection (b).

(b) The credit equals the lesser of:

(1) the amount deposited in the Indiana tobacco master settlement agreement fund established by IC 4-12-1-14.3 during the preceding calendar year that is attributable to the participating manufacturer, as determined by the budget agency; or

(2) the total fees reported and paid to the department by the participating manufacturer under section 11(c) of this chapter.

Sec. 13. A nonparticipating manufacturer is not entitled to a credit against the fee imposed under section 11 of this chapter.

Sec. 14. (a) The cigarette manufacturer fee account is established within the state general fund.

(b) The account consists of revenue deposited under section 11 of this chapter and money otherwise appropriated or designated by the general assembly.

(c) The state department of health shall administer the account.

(d) Not later than January 15 of each year, the state department of health shall distribute money deposited in the account during the immediately preceding calendar year as follows:

(1) The lesser of:

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- 1 (A) the first two million dollars (\$2,000,000); or
 2 (B) the balance in the account;
 3 for the use of programs operated by the state department of
 4 health to prevent the spread of the human immunodeficiency
 5 virus (HIV).
 6 (2) If money remains in the account following a distribution
 7 under subdivision (1), the lesser of:
 8 (A) one million dollars (\$1,000,000); or
 9 (B) the balance in the account;
 10 for capital expenditures of community health centers (as
 11 defined in IC 34-18-2-9) relating to construction.
 12 (3) Any money remaining in the account following
 13 distributions under subdivisions (1) and (2) to the Indiana
 14 tobacco master settlement agreement fund created by
 15 IC 4-12-1-14.3.
 16 (e) A distribution described in subsection (d)(1) or (d)(2) is in
 17 addition to any appropriation in a budget bill enacted by the
 18 general assembly.
 19 (f) A capital expenditure under subsection (d)(2) is not subject
 20 to the review procedures for capital projects included in the budget
 21 bill enacted by the general assembly.
 22 Sec. 15. (a) On or before the fifteenth day of each month, a
 23 distributor shall report to the department the following
 24 information:
 25 (1) The number and denomination of each stamp affixed to a
 26 package of cigarettes.
 27 (2) The manufacturer and brand family of each package
 28 described in subdivision (1).
 29 (3) The retailer (as defined in IC 6-7-1-7) that receives each
 30 package described in subdivision (1).
 31 (b) Information reported under this section must be maintained
 32 and is subject to inspection under IC 6-7-1-19.
 33 Sec. 16. If the department discovers cigarettes on which the fee
 34 under this chapter has not been paid, the department may seize
 35 and take possession of the cigarettes. The seized cigarettes are
 36 forfeited to the state. The department shall destroy the seized
 37 cigarettes.
 38 Sec. 17. The department shall adopt rules under IC 4-22-2 to
 39 implement this chapter.

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